IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/09/2003

Coram

The Hon'ble Mr.Justice S.SARDAR ZACKRIA HUSSAIN

Civil Revision Petition (P.D.)No.1295 of 2003
and
C.M.P.No.9089 of 2003

M.Asoan D.Sheam(Minor)
represented by mother
Usha as guardian. ... Petitioner.

-Vs-

P.Mohan Ram alias Mohan. ... Respondent.

Civil Revision Petition under Section 115 C.P.C. against the order and decretal order dated 21.11.2002 made in I.A.No.849 of 2002 in O.S.No.203 of 1999 on the file of the Principal District Munsif Court, Padmanabhapuram, Kanyakumari District.

!For petitioner : Mr.Isaac Mohanlal.

^For respondent : Mr.C.Rajakumar.

:O R D E R

By consent of both parties, the Civil Revision Petition itself has been taken up for final disposal.

2. This Civil Revision Petition is filed by the plaintiff in O.S. No.203 of 1989 on the file of District Munsif Court, Padmanabhapuram challenging the correctness of the order in I.A.No.849 of 2002 dated 2 1.11.2002.

3. The parties are described as per their rankings in the suit.

4. The revision petitioner/plaintiff filed the suit in O.S.No.203 of 1999 claiming maintenance through her guardian, mother. The suit was resisted by filing written statement. The defendant also filed I.A.No.849 of 2002 pending suit that the trial Court has no territorial jurisdiction to try the case stating that the marriage of the defendant with the mother of the plaintiff was celebrated on 6.2.1995 at Kottamam in Kerala State and as such the marriage and the birth of the plaintiff due to the wed lock have been

admitted. After marriage, both were residing in the marital home at Nediyakalavilai Veedu, Vilavancode Taluk. The mother of the plaintiff was working in Ponmani Middle School, which was little away from the marital home and the defendant got transfer to the nearer place to Melpuram. However, the plaintiff's mother managed to get retransfer to Ponmani Middle School. Further, according to the defendant, the plaintiff left the marital home deserting him and gave birth to a male child at the C.S.I. Mission Hospital, Marthandam. Therefore, according to the defendant, the District Munsif Court, Padmanabhapuram has no territorial jurisdiction to try the suit filed for maintenance by the plaintiff through her mother.

5. The trial Court, considering the place of marriage of the defendant with the plaintiff and the place of the matrimonial home, viz., Arumana and thereafter Thiruvella at Kerala are not within the jurisdiction of the Principal District Munsif Court, Padmanabhapuram, recorded its finding

that the Court has no territorial jurisdiction and accordingly allowed the I.A.No.849 of 2002. The said order is under challenge in this revision petition.

6. The point for consideration is as to whether such order made is proper.

7. Heard the counsel for both.

8. As per para 2 of the plaint, after marriage, the plaintiff's mother and the defendant were living as wife and husband in the defendant's house at Nediakalavilai Veedu, Muthappancode, Arumana and due to the wedlock, the plaintiff was born to them on 25.9.1996. In paragraph 5 of the plaint, it is further stated that the defendant arranged to leave for Thiruvella along with Rajam, his concubine, since her mother fell sick and the defendant took the plaintiff's mother to her parent's house at Kannamakara in Valvachagoshtam village on 15.4.1 996 and thereafter the defendant did not return to fetch her back to the matrimonial home. In paragraph 14 of the plaint, it is stated that the cause of action arose on 6.2.1995, the date of marriage, and at Valvachagoshtam village from where the suit notice was issued and such notice was received by the defendant in that place, at Valavachagoshtam village in Kalkulam Taluk.

9. The learned counsel for the revision petitioner argued that since the revision petitioner has been residing with his mother at Palliyadi, Valvachagoshtam village since 1996 and which is within the territorial jurisdiction of the Principal District Munsif Court, Padmanabhapuram, it is only the said Court which got territorial jurisdiction. Further according to the learned counsel for the revision petitioner, the issue being the mixed question of law and facts that cannot be decided as preliminary issue.

10. The learned counsel for the revision petitioner has brought to the notice, the following decisions:-

(1) 1990-2 Law Weekly, 279 (R.Geetha vs. - A.T.Ranjan). In that

case this Court has observed:-

"Guardians and Wards Act, (8 of 1890), Sections 9(1) and 25 □ "
Ordinarily resides", meaning of □ Application by father for custody of child
living with its mother who is separated from her husband □ Jurisdiction of the
court is at the place where the mother resides and not at the place of
residence of father."

(2) A.I.R.1980 Rajasthan, 192 (Cheni Ram and another □ Shanti Devi and
another). It is observed that the issue in a mixed question of law and fact
cannot be decided as preliminary issue under order XIV Rule 2 C.P.C.

(3) A.I.R. 1991 Calcutta 237 (Naresh Chandra Das □ vs. - Gopal
Chandra Das). In that case it is observed that the issue of territorial
jurisdiction of Court is mixed question of law and facts that cannot be
decided as preliminary issue under Order XIV Rule 2 C.P.C..

(4) A.I.R. 1964 Supreme Court 497 (Major S.S.Khanna v. F.J.
Dillon). The Full Bench of the Hon'ble Supreme Court overruling the decisions
reported in A.I.R. 1921 Allahabad(1) (Buddhulal □ vs. - Mewa Ram, A.I.R.
1953 Rajasthan 137 (Swarupnarain □ vs. - Gopinath) and A.I.R. 1953 Rajasthan
90 (Pyarchand □ vs. - Dungar Singh) has ruled at page 502:-

"Under Order 14 Rule 2 where issues both of law and of fact arise in
the same suit, and the Court is of opinion that the case or any part thereof
may be disposed of on the issues of law only, it shall try those issues first,
and for that purpose may, if it thinks fit, postpone the settlement of the
issues of fact until after the issues of law have been determined. The
jurisdiction to try issues of law apart from the issues of fact may be
exercised only where in the opinion of the Court the whole suit may be
disposed of on the issue of law alone, but the Code confers no jurisdiction
upon the Court to try a suit on mixed issues of law and fact as preliminary
issues. Normally all the issues in a suit should be tried by the Court : not
to do so, especially when the decision on issues even of law depends upon the
decision of issues of fact, would result in a lop-sided trial of the suit."

11. The learned counsel for the respondent contended supporting the
order of the trial Court that considering the place of marriage of the
defendant with the plaintiff's mother as well as the residence of the marital
home, namely at Arumana and Thiruvella at Kerala are not within the
territorial jurisdiction of the Principal District Munsif Court,
Padmanabhapuram, the trial Court has rightly found that the said Court has no
territorial jurisdiction to try the case. The learned counsel for the
respondent has also referred the following decisions:-

(1) A.I.R. 1992 Madhya Pradesh 260 (Pushpa Datt Mishra □ vs. - Smt.
Archana Mishra alias Premvati Choubey). It is observed:-

"Understanding the words "last resided together", in the context of
marriage relationship, one has to keep in mind that a Hindu wife, after the
marriage, is expected to live with the husband at the place of the husband.

The traditional concept of a Hindu wife is . . . . The literal meaning is that she has always to be in company of the husband and to follow him wherever he goes. In the modern society, however, husband and wife both may seek service, gain employment and work at different places away from each other, but even in such cases, the marital home would be the place where the husband lives. The place where the wife is posted in service cannot be said to be her marital home. The place where the husband is posted can be, taken to be the marital home of the parties and a visit of the wife to that place can be taken to be the place of their residence. Duration of stay is irrelevant. The question is whether the place where the husband lives, can be said to be the place where they are expected to live together? If that is the place where they last resided together, that would be sufficient to confer jurisdiction on the Court of that place. The place where the parents of the husband live or the place from which the husband hails cannot be said to be their matrimonial home or their place of residence. Even if both of them lived together last at the parental house of the husband, it cannot be the place where they can be said to have, in law, last resided, within the meaning of Section 19(iii) of the Act."

(2) 2001(2) C.T.C. 302 (Dr.David Chakravarthy Arumainayagam and another vs. - Geetha Chakravarthy Arumainayagam and another). This Court has held:-

"Question of jurisdiction can be tried as preliminary issue although it is question of fact and law, in view of clear averments in suit disclosing total lack of jurisdiction under Section 2"

12. The minor petitioner through his guardian mother filed suit O. S.No.203 of 1999 in the Principal District Munsif Court, Padmanabhapuram claiming maintenance. The address of the petitioner is given as residing at Kannamkara Murungavilai, Palliyadi & Post, Valvachagoshtam village, Kalkulam Taluk, Kanyakumari District. The address of the respondent is given as Muthuppancode, Arumanai, Mulucode Desom, Vilavancode village, Kanyakumari District. Both are residing within the territorial jurisdiction of the Principal District Munsif Court, Padmanabhapuram. The relief sought for is only maintenance from the respondent being the father of the plaintiff. The territorial jurisdiction of the Court is only the place where the mother resides and not the place of marriage of the defendant with the plaintiff's mother and the place of matrimonial home, viz., Arumanai and thereafter Thiruvella at Kerala which are not within the territorial jurisdiction of the Principal District Munsif Court, Padmanabhapuram. The plaintiff is now residing at Kannamkara Murungavilai, Palliyadi, Valvachagoshtam village, Kalkulam Taluk, Kanyakumari District, within the territorial jurisdiction of the Principal District Munsif Court, Padmanabhapuram. In that case, it is only the Principal District Munsif Court, Padmanabhapuram which has got territorial jurisdiction to try the suite O.S. No.203 of 1999. It follows that the order made in I.A.No.849 of 2002 in O.S.No.203 of 1999 stating that the Principal District Munsif Court, Padmanabhapuram has no territorial jurisdiction to try the above suit is not proper.

13. The suit has been filed by minor son claiming maintenance from

the father of the minor petitioner, who, it appears, is a government servant, and at the rate of Rs.1,500/- per month.

14. In the result, the Civil Revision Petition is allowed. The order in I.A.No.849 of 2002 in O.S.No.203 of 1999 on the file of the Principal District Munsif Court, Padmanabhapuram is set aside and the same is dismissed. The trial Court is directed to dispose of the suit in O.S.No.203 of 1999 in accordance with law. No costs. Consequently, the C.M.P.No.9089 of 2003 is closed.

Index: Yes

ts.

To

The Principal District Munsif,
Padmanabhapuram.